

UNITED STATES OF AMERICA

TRAVIS DELL JONES,

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OPINION AND ORDER

By: James P. Jones
Chief United States District Judge

The defendant takes issue with the statement in my prior opinion that “§ 3501 was found to be unconstitutional and preempted in *Dickerson v. United States*, 530 U.S. 428 (2000), because it purports to allow the admission of voluntary confessions even where constitutionally required *Miranda* warnings are not given.” *United States v. Jones*, No. 1:08CR00040, at 9 (Dec. 10, 2008). To clarify, not all of § 3501 was held unconstitutional in *Dickerson*, but only the portion that would supplant *Miranda*.

The opinion goes on to explain that after *Dickerson*, voluntariness remains “a constitutional requirement for the admission of a confession separate and apart from *Miranda*.” *Jones*, No. 1:08CR00040, at 10. The voluntariness standard, “which was codified in § 3501 . . . is a totality of the circumstances test—no one factor is determinative.” *Id.* at 9-10; *see Reck v. Pate*, 367 U.S. 433, 440 (1961) (“[A]ll the circumstances attendant upon the confession must be taken into account.”); § 3501(b) (“The trial judge in determining the issue of voluntariness shall take into consideration all the circumstances surrounding the giving of the confession . . .”).

In my previous opinion, I considered the totality of the circumstances, including the five nonexclusive factors set forth in § 3501(b). The defendant’s argument had centered around one factor in particular, § 3501(b)(5), which is an evaluation of “whether or not [the] defendant was without the assistance of counsel when questioned and when giving such confession.” I concluded that although the defendant’s counsel was negligent, considering all of the facts and circumstances, the confession was voluntary.

For these reasons, it is **ORDERED** that the motion for reconsideration (#65) is DENIED.

ENTER: December 12, 2008

/s/ JAMES P. JONES
Chief United States District Judge